

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

Marciano Vallejo,	:	
	:	
Petitioner(s),	:	
	:	Case Number: 1:09cv499
vs.	:	
	:	Chief Judge Susan J. Dlott
Warden, Dayton Correctional Institution,	:	
	:	
Respondent(s).	:	

ORDER

This matter is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Timothy S. Hogan. Pursuant to such reference, the Magistrate Judge reviewed the pleadings and filed with this Court on July 21, 2010 a Report and Recommendation (Doc. 12). Subsequently, the petitioner filed objections to such Report and Recommendation (Doc. 16).

The Court has reviewed the comprehensive findings of the Magistrate Judge and considered de novo all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Recommendation should be adopted.

Accordingly, respondent's motion to dismiss (Doc. 8) is **GRANTED**, and petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Doc. 2) is **DENIED** with prejudice on the ground that it is time-barred under 28 U.S.C. § 2244(d).

A certificate of appealability will not issue for any of the claims alleged in the petition, which this Court has concluded are barred from review on a procedural ground, because under the first prong of the applicable two-part standard enunciated in *Slack v. McDaniel*, 529 U.S.

473, 484-85 (2000), “jurists of reason” will not find it debatable whether the Court is correct in its procedural ruling.

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court will certify pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of any Order adopting the Report and Recommendation will not be taken in “good faith,” and therefore **DENIES** petitioner leave to appeal *in forma pauperis* upon a showing of financial necessity. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6<sup>th</sup> Cir. 1997).

IT IS SO ORDERED.

s/Susan J. Dlott  
Chief Judge Susan J. Dlott  
United States District Court